



**U.S. Department of Justice**

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December 7, 2020

**BY ECF AND E-MAIL**

Hon. Andrew L. Carter  
United States District Judge  
Thurgood Marshall Federal Courthouse  
40 Foley Square  
New York, New York 10007

Re: *United States v. Anthem, Inc.*, 20 Civ. 2593 (ALC)

Dear Judge Carter:

This Office represents plaintiff the United States (“Government”) in the above-referenced False Claims Act (“FCA”) case. We write respectfully to bring to the Court’s attention an opinion that the Second Circuit issued recently, reversing in part, vacating in part, and affirming in part the dismissal of an FCA complaint on materiality grounds. *See United States v. Strock*, No. 19-4331 (2d Cir. Dec. 2, 2020) (“*Strock* Slip Op.”) (enclosed).

We respectfully bring this decision to the Court’s attention because it bears on some of the same materiality issues raised in the Rule 12(b)(6) motion pending in this case. *See* Dkt. 37 (“Def. Br.”) at 36-48; Dkt. 44 (“US Br.”) at 27-41. More specifically, *Strock* touches the following legal issues also discussed in the parties’ briefing here:

- i) the factors that a court should assess in examining materiality under *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989 (2016), *see Strock* Slip Op. at 10-11, 17-27; Def. Br. at 36-48; US Br. at 29-35;
- ii) the consideration, in a materiality analysis under *Escobar*, of the Government’s post-payment enforcement conduct, *see Strock* Slip Op. at 18-22; Def. Br. at 41-45; US Br. at 33-38;
- iii) the appropriateness, at the motion to dismiss stage, of extrinsic evidence offered by a defendant regarding the Government’s knowledge of a misrepresentation, *see Strock* Slip Op. at 24; Def. Br. at 46-47; US Br. at 36-38; and
- iv) the balancing of allegations relating to the *Escobar* factors, *see Strock* Slip Op. at 26-27; Def. Br. at 36-40; US Br. at 29-35.

If the Court would find supplemental briefing addressing *Strock* useful, we would be glad to confer with counsel for the defendant and propose a schedule for such additional

